Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

Zoran Zubic,

applicant,

and

Teamsters Local Union No. 879,

certified bargaining agent,

and

NLS International Inc.,

employer.

Board Files: 30451-C, 30459-C
Neutral Citation: 2014 CIRB **732**
July 4, 2014

The Canada Industrial Relations Board (the Board) was composed of Ms. Elizabeth MacPherson, Chairperson, and Messrs. André Lecavalier and Gaétan Ménard, Members.

Parties' Representatives of Record

Mr. Zoran Zubic;
Mr. John McCann, for the Teamsters Local Union No. 879;
Ms. Eileen Andrews, for NLS International Inc.

These reasons for decision were written by Ms. Elizabeth MacPherson.

I. Nature of the Application

[1] On May 6, 2013, the Canada Industrial Relations Board (the Board) certified Teamsters Local Union No. 879 (Teamsters 879) as the bargaining agent for a unit of employees of

NLS International Inc. (NLS or the employer) working in the City of St. Catharines, Ontario (Board order no. 10423-U).

[2] On May 16, 2014, the Board received an application for the revocation of this order (Board file no. 30451-C). The application was filed by Mr. Zoran Zubic (the applicant), purportedly on behalf of himself and three other members of the bargaining unit.

[3] In accordance with the Board's standard procedures, the application was reviewed by one of the Board's Industrial Relations Officers (IRO). The IRO contacted the applicant to advise him that the application did not comply with section 36 of the *Canada Industrial Relations Board Regulations 2012* (the *Regulations*), which reads as follows:

> **36.** (1) In addition to the information required for an application made under section 33, an application made by an employee under section 38 of the *Code* must include **a separate and confidential statement, signed by each employee** whom the applicant claims to represent, stating that they do not wish to be represented by the bargaining agent and **authorizing the applicant to act on their behalf.**
>
> (2) The statement described in subsection (1) shall show the printed name, the date on which each employee signed the statement, and **that date shall be not more than six months before the date on which the application is filed.**
>
> (emphasis added)

[4] Specifically, there were three deficiencies with respect to the application:

1. No evidence was provided that the applicant had been authorized by the other employees to act on their behalf;
2. The Board was not provided with original separate statements signed by each of the employees who purportedly supported the application; and
3. The signatures on the copy of the petition that was provided to the Board were all dated more than six months before the date on which the application was filed.

[5] As contemplated in section 47 of the *Regulations*, the IRO provided the applicant with an opportunity to bring his application into compliance with the *Regulations*. Rather than doing so, or withdrawing the defective application, the applicant filed a second application (Board file no. 30459-C). This application is also deficient, in that it:

1. Fails to provide evidence that the applicant had been authorized by the other employees to act on their behalf;

2. Does not contain any original separate statements signed by each of the employees who purportedly supported the application.

[6] Consequently, the Board is now seized with two applications for revocation of Board order no. 10423-U. The Board has decided to deal with these applications consecutively, in the order in which they were received.

[7] The Board has the power to exempt a person from complying with any rule of procedure under the *Regulations*, when an exemption is necessary to ensure the proper administration of the *Code* (see section 46 of the *Regulations*). However, this power is exercised sparingly, as the Board expects parties appearing before it to comply with its procedural regulations. In the instant case, no evidence or argument was provided by the applicant to support a request for an exemption with respect to any of the provisions of section 36 of the *Regulations*. The Board has not been persuaded that there is any principled reason for granting an exemption to the provisions of section 36 of the *Regulations* with respect to either of these revocation applications.

[8] The deficiencies in the first application (Board file no. 30451-C) are significant. In particular, the Board strictly adheres to provisions that set time periods for taking various steps. In this case, the signatures on the petition that was provided to the Board indicated that they were given long before the first application was filed, and certainly far more than six months previously. Accordingly, the Board must dismiss the first application because it is not in compliance with section 36 of the *Regulations*.

[9] The dismissal of an application for revocation, like the dismissal of an application for certification, carries with it certain consequences that are set out in the *Regulations*. Specifically, section 39 of the *Regulations* establishes the consequences that follow the dismissal of a revocation application:

> **39.** Any employee shall not file a new application for revocation of certification in respect of the same bargaining unit until six months have elapsed from the date on which a previous application was rejected.

[10] Once again, no principled reason has been provided by the applicant to suggest that the Board should exempt him from the operation of this regulation, and the Board is not persuaded that an exemption should be granted. Accordingly, the six-month time bar against a new

revocation application applies, and the second application (Board file no. 30459-C) must be dismissed as untimely.

[11] However, even if the second application had been timely, it would have been dismissed on the grounds that it did not comply with section 36 of the *Regulations*, as explained in paragraph [5] above.

[12] As both applications have been dismissed, the Board's files in these matters are closed.

[13] This is a unanimous decision of the Board.